

- (1) How many weeks of benefits should be awarded for injury to claimant's left hand which includes amputation of the left little

finger and a substantial portion of the metacarpal bone between the wrist and left little finger?

- (2) Is claimant entitled to additional benefits for a healing period and, if so, how many weeks?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds and concludes as follows:

A. Findings of Fact

- (1) On July 6, 1995, claimant, a printing press operator for respondent, injured his left hand when the press started unexpectedly and pulled his hand into the punch unit.
- (2) As a result of the injury, John B. Moore, IV, M.D., performed an amputation of the left little finger and a substantial portion of the left metacarpal.
- (3) In addition to the amputation, claimant suffered a loss of range of motion to the ring finger of the left hand and a loss of grip strength in the left hand. He also continues to suffer pain and discomfort in his left hand.
- (4) As a result of the compensable injury, claimant sustained a 30 percent permanent partial impairment of function to his left hand measured in accordance with the Third Edition (Revised) of the AMA Guides to the Evaluation of Permanent Impairment. This finding gives equal weight to the functional impairment ratings by John B. Moore, IV, M.D., and Daniel D. Zimmerman, M.D.
- (5) Following the injury, claimant missed 5.27 weeks of work. When he returned to work he did not return to his usual work for three to four months. He worked instead repairing small objects used on the presses.

B. Conclusions of Law

- (1) Amputation of the little finger and a substantial portion of the metacarpal entitles the claimant to disability benefits at the level of the hand but does not entitle claimant to the 150 weeks of benefits given for amputation of the hand.

The central issue in this case is whether the amputation, which included part of the fifth metacarpal as well as the little finger, entitles the claimant to the full 150 weeks allotted for loss of the hand or only a portion of that 150 weeks. In support of his argument for 150 weeks of benefits, claimant cites Bergemann v. North Central Foundry, Inc., 215 Kan. 685, 527 P.2d 1044 (1974). In that case, claimant suffered a crush injury to his right foot and

underwent surgical procedures resulting in partial amputation. The dispute in that case concerned the back complaints which appeared after the injury and hospitalization. The record contained evidence suggesting those complaints resulted from the period of immobilization, use of crutches, and lack of symmetry while walking. In discussing the facts, the Court stated that claimant is entitled to a minimum award of 125 weeks for loss of the foot plus the healing period. The entitlement to the 125 weeks was not an issue. The statement that claimant was entitled to 125 weeks was dicta. In addition, the opinion does not indicate where the amputation occurred, only that it was partial. For these reasons the Board does not consider the Bergemann decision to be binding precedent on the issue before the Board.

Permanent disability benefits for injuries to the hand and fingers are governed by K.S.A. 44-510d. Subsection (a)(5) provides for 15 weeks of benefits for loss of the little finger. Subsection (a)(11) provides for 150 weeks of benefits for loss of a hand.

Claimant argues for the full 150 weeks, in part, on the basis of subsection (a)(18) of K.S.A. 44-510d:

Amputation or severance below the wrist shall be considered as the loss of a hand. Amputation at the wrist and below the elbow shall be considered as the loss of the forearm.

Claimant also points, in support of his argument, to provisions of K.S.A. 44-510d(a)(6) which states:

Amputation through the joint shall be considered a loss to the next higher schedule.

Finally, claimant refers to provisions of K.A.R. 51-7-8. Subsection (b)(3) of that regulation provides a method for computation of partial amputation of a finger or toe. Subsection (b)(4) then provides:

If a scheduled member other than a part of a finger, thumb or toe is amputated, compensation shall be computed by multiplying the number of weeks on the schedule by the worker's weekly temporary total compensation rate.

The Appeals Board concludes, however, that the language in K.S.A. 44-510d(a)(18) assumes a severance below the wrist which crosses the entire width of the hand. The Appeals Board has construed the statute in this fashion principally for two reasons. First, an amputation such as that suffered by claimant leaves a substantial portion of the function or use of the hand available to the claimant. It is, therefore, logical to treat it differently from the loss of the entire hand. In addition, the statute governing benefits for scheduled injuries, K.S.A. 44-510d, was amended in 1993. Subsection (a)(23) stated that loss of a

scheduled member is to be rated using the third edition, revised, of the “American Medical Association Guidelines for the Evaluation of Physical Impairment.”

Section 3.1b of the Guides to the Evaluation of Permanent Impairment, Third Edition (Revised) states:

Amputation of **all** digits at the metacarpophalangeal joint level is considered to be 100% impairment of the hand or 90% impairment of the upper extremity. (Emphasis added.)

Figure 3 on page 15 of those Guides specifies a percentage for amputation at each of the various possible levels of the hand. Amputations which do not run across the entire width of the hand are shown there at less than 100 percent of the hand. Amputation through the metacarpophalangeal joint on the little finger is rated as 10 percent loss of the hand and no higher rating is shown for amputation of the metacarpal below that joint. The Appeals Board concludes that the legislature intended that any amputation below the wrist, other than the specifically accounted for finger amputations, be treated on the basis of rating to the hand. The legislature did not intend that any and all such amputations be entitled to the full 150 weeks benefits for loss of the entire hand.

(2) Claimant is entitled to benefits for 30 percent loss of use of his left hand. K.S.A. 44-510d(a)(21) and (23).

(3) Claimant is entitled to a 15-week healing period.

K.S.A. 44-510d(b) authorizes a healing period in cases of amputation. Claimant may be allowed a healing period of not more than 10 percent of the total period allotted for the scheduled injury in question and, in any event, not longer than 15 weeks. Return by the employee to his “usual occupation” also terminates the healing period. In this case, claimant was off work for 5.27 weeks. When he returned, he was placed in a different type of work. The Appeals Board concludes that the work to which he returned was not his “usual occupation” for that three to four months. Accordingly, the Board may, and does here, allow an additional healing period of 15 weeks, subject to the calculation below.

(4) Computation of claimant’s benefits should be computed by first adding the 15 weeks to the 150 weeks. With the 165 weeks as the starting point, the number of weeks of benefits are then calculated as all other scheduled injuries by subtracting the number of weeks of temporary total benefits and multiplying the result by the percentage of loss of use. In this case, claimant is then entitled to 47.92 weeks of benefits in addition to the weeks of temporary total benefits. Carter v. Koch Engineering, 12 Kan. App. 2d 74, 735 P.2d 247, *rev. denied* 241 Kan. 838 (1987).

AWARD

WHEREFORE, the Appeals Board finds that the Award entered by Administrative Law Judge Robert H. Foerschler, dated March 11, 1997, should be, and is hereby, modified as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Donald A. Landry, and against the respondent, Graphic Technology, Inc., and its insurance carrier, ITT Hartford Insurance, for an accidental injury which occurred July 6, 1995, for 5.27 weeks of temporary total disability compensation at the rate of \$326 per week or \$1,718.02, followed by 47.92 weeks at the rate of \$326 per week or \$15,621.92, for a 30% permanent partial loss of use of the hand, making a total award of \$17,339.94, all of which is presently due and owing.

The Appeals Board approves and adopts all other orders by the Administrative Law Judge not inconsistent herewith.

IT IS SO ORDERED.

Dated this ____ day of September 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Brad I. Pearson, Kansas City, MO
Jeffrey S. Austin, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director